IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No. 3

Criminal Misc. Application No. 265 of 2003

Pradeep Kumar and others ---- Petitioners.

Vs.

State of Uttaranchal and others ---- Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Rajendra Singh learned counsel for the petitioners.

2- Having heard the learned counsel and perused the record of the petition I feel no need to issue notices to the respondents and the petition is being disposed of finally.

3- This is a petition under section 482 of the Code of Criminal Procedure (for short 'Code') against the impugned order dated 15-10-2003 whereby the learned Additional Sessions Judge Roorkee passed an order under section 319 of the 'Code' in order to proceed against four other alleged culprits along with accused charge sheeted for an offence punishable under sections 363, 366, 376 I.P.C. It is of significance that only one accused named as Pradeep was nominated in the F.I.R. and after investigation charge sheet against him was submitted. The learned Additional Sessions Judge, however, on the basis of the evidence of the witnesses of the prosecution formed a view that there are prima facie grounds to proceed also against other four persons named as the culprits by the witnesses. The learned Additional Sessions Judge did not care to consider the statement of the prosecutrix recorded under section 161 as well as section 164 of the 'Code' at the investigation stage and also the similar statements of the other witnesses. It is not one of those cases in which more than one accused is nominated in the F.I.R. but on investigation charge sheet is submitted against few of them. Considering this aspect, the perusal of the statements recorded during the investigation was essential for just conclusion to proceed against those persons now belatedly named in the evidence by the witnesses.

4- In view of above the impugned order suffers from vice of impropriety and the same can not be legally maintained. The order deserves to be set aside with

the direction that the learned Additional Sessions Judge shall decide the application under section 319 of the ‘Code’ after perusal of the case diary as well as the statements recorded under section 164 of the ‘Code’ and the observations made above.

5- The petition is accordingly disposed of finally.

Dated: 1-11-2003 **(Irshad Hussain, J.)**

ISB